

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author: La Suer Analyst: Rachel Coco Bill Number: AB 2367
Related Bills: See Legislative History Telephone: 845-4328 Introduced Date: February 23, 2006
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Penalties For Persons Who Willfully Divulge Or Make Known Software/At Discretion Of Court

SUMMARY

This bill would clarify the penalties for persons who willfully divulge computer software obtained by subpoena.

This bill would also make numerous other amendments relating to crimes. These amendments do not impact the Franchise Tax Board (FTB) and are not discussed in this analysis.

PURPOSE OF THE BILL

It appears the purpose of the bill is to remove ambiguity from the law.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative beginning January 1, 2007.

POSITION

Pending.

ANALYSIS**FEDERAL/STATE LAW**

Current federal and state laws authorize the IRS and FTB to examine books, papers, records, or other data that may be relevant to an inquiry into the correctness of income tax returns. In addition, both the IRS and FTB may issue summonses on certain third-party record keepers.

Federal law generally prohibits the IRS from issuing a summons or enforcing a summons to produce or analyze any tax-related computer software and source code that is obtained by the IRS in the course of the examination of a taxpayer's return. However, a summons may be issued for tax-related computer source code if any of the following occur:

1. The IRS cannot otherwise reasonably ascertain the accuracy of any item on a return from the taxpayer's records or computer software program and related data which, when executed, produce the output to prepare the return;
2. The IRS identifies with reasonable specificity the portion, item, or component of the source code needed to verify the correctness of a return item;
3. The IRS determines that the need for the source code outweighs the risk of an unauthorized disclosure of trade secrets.

Board Position:

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Department Director

Date

S. Stanislaus

4/24/06

Under federal law, any person who willfully divulges, or makes known to another person, software that was obtained via subpoena for the purpose of examining a taxpayer's return will be punished, upon conviction, either by imprisonment not to exceed five years or by a fine not to exceed \$5,000, or by both.

Current state law generally conforms with federal law except that the punishment for willfully divulging computer software obtained via subpoena is either a misdemeanor or a felony, at the court's discretion, and if convicted, the offense is punishable by imprisonment in the county jail not to exceed one year, or in state prison not to exceed five years, or by a fine of up to \$5,000 or both.

THIS BILL

This bill would change the term of punishment for persons who willfully divulge computer software obtained via subpoena. Under this bill, the punishment would be imprisonment in a county jail for not more than a year, or in the state prison, at the discretion of the court, by a fine of not more than \$5,000, or by both that fine and imprisonment.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs or operations.

TECHNICAL CONSIDERATIONS

This bill removes the state prison term of punishment for willful disclosure and leaves the punishment term to the discretion of the court. If the author's intent is to remove ambiguity by making discretionary terms specific, the author may wish to amend the bill to state the specific time for the state prison term of punishment.

LEGISLATIVE HISTORY

SB 94 (Chesbro, Stats. 1999, Ch. 931) enacted, among other things, the provision that prohibits FTB from issuing a subpoena in a civil action for any portion of any third-party tax-related computer source code unless specified requirements are satisfied. SB 94 also made it a crime to willfully divulge or make known software obtained by subpoena.

FISCAL IMPACT

This bill would not impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's tax revenues.

LEGISLATIVE STAFF CONTACT

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